

§ 13.79

14 CFR Ch. I (1–1–07 Edition)

(3) An express waiver of right to further procedural steps and of all rights to judicial review;

(4) An incorporation by reference of the notice and an acknowledgement that the notice may be used to construe the terms of the order of compliance; and

(5) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with Subpart D of this part, the proposal for a consent order shall include a request to be filed with the Hearing Officer withdrawing the request for a hearing and requesting that the case be dismissed.

§ 13.79 Hearing.

If an alleged violator requests a hearing in accordance with § 13.75, the procedure of Subpart D of this part applies. At the close of the hearing, the Hearing Officer, on the record or subsequently in writing, sets forth the Hearing Officer's findings and conclusion and the reasons therefor, and either—

(a) Dismisses the notice of proposed order of compliance; or

(b) Issues an order of compliance.

§ 13.81 Order of immediate compliance.

(a) Notwithstanding §§ 13.73 through 13.79, the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel may issue an order of immediate compliance, which is effective upon issuance, if the person who issues the order finds that—

(1) There is strong probability that a violation is occurring or is about to occur;

(2) The violation poses a substantial risk to health or to safety of life or property; and

(3) The public interest requires the avoidance or amelioration of that risk through immediate compliance and waiver of the procedures afforded under §§ 13.73 through 13.79.

(b) An order of immediate compliance is served promptly upon the person against whom the order is issued by telephone or telegram, and a written statement of the relevant facts and the legal basis for the order, including

the findings required by paragraph (a) of this section, is served promptly by personal service or by mail.

(c) The official who issued the order of immediate compliance may rescind or suspend the order if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied, and, when appropriate, may issue a notice of proposed order of compliance under § 13.73 in lieu thereof.

(d) If at any time in the course of a proceeding commenced in accordance with § 13.73 the criteria set forth in paragraph (a) of this section are satisfied, the official who issued the notice may issue an order of immediate compliance, even if the period for filing a reply or requesting a hearing specified in § 13.75 has not expired.

(e) Within three days after receipt of service of an order of immediate compliance, the alleged violator may request a hearing in accordance with Subpart D of this part and the procedure in that subpart will apply except that—

(1) The case will be heard within fifteen days after the date of the order of immediate compliance unless the alleged violator requests a later date;

(2) The order will serve as the complaint; and

(3) The Hearing Officer shall issue his decision and order dismissing, reversing, modifying, or affirming the order of immediate compliance on the record at the close of the hearing.

(f) The filing of a request for hearing in accordance with paragraph (e) of this section does not stay the effectiveness of an order of immediate compliance.

(g) At any time after an order of immediate compliance has become effective, the official who issued the order may request the United States Attorney General, or the delegate of the Attorney General, to bring an action for appropriate relief in accordance with § 13.25.

[Doc. No. 18884, 44 FR 63723, Nov. 5, 1979, as amended by Amdt. 13–19, 54 FR 39290, Sept. 25, 1989; Amdt. 13–29, 62 FR 46866, Sept. 4, 1997]